

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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|-------------------------------------|---|-----------------------------------|
| In the Matter of |) | |
| |) | |
| Inmarsat Ventures Limited |) | |
| Freedom of Information Act Request |) | File Nos. SAT-MOD-20031118-00333; |
| Regarding Mobile Satellite Ventures |) | SAT-AMD-20031118-00332; |
| Subsidiary LLC Ex Parte Proceedings |) | SES-MOD-20031118-01879 |
| |) | |
| Order Adopting Protective Order |) | |
| |) | |

ORDER

Adopted: May 7, 2004

Released: May 7, 2004

By the Chief, Satellite Division, International Bureau:

1. On December 16, 2003, Commission staff requested certain information¹ from Mobile Satellite Ventures Subsidiary LLC (“MSV”) regarding pending waiver requests associated with MSV’s Ancillary Terrestrial Component (“ATC”) application.² In a responsive letter dated December 30, 2003, counsel for MSV submitted further information,³ requesting that some of the information be treated as confidential and providing redacted copies for the public application files.⁴ MSV alleged that the redacted information pertaining to the current and projected demand for its satellite services is commercially sensitive.⁵ MSV also alleged that disclosure of redacted information pertaining to the

¹ See E-mail from Breck Blalock, Deputy Chief, Policy Division, International Bureau, Federal Communications Commission, to Bruce D. Jacobs, Counsel for Mobile Satellite Ventures Subsidiary LLC, December 16, 2003.

² File Nos. SAT-MOD-20031118-00333 (Modification of space station license (AMSC-1); SAT-AMD-20031118-00332 (Amendment to application for authority to launch and operate replacement satellite); and SES-MOD-20031118-01879 (Modification of blanket license for operation of mobile terminals with MSAT-1 (E980179)); *see also*, Policy Branch Information, *Public Notice*, Mobile Satellite Ventures Subsidiary LLC Ancillary Terrestrial Component Applications Accepted for Filing, Report No. SPB-200, (rel. Feb. 9, 2004).

³ Letter from Bruce D. Jacobs, Shaw Pittman LLP, counsel to Mobile Satellites Ventures Subsidiary LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 30, 2003 (“MSV December 30 Letter”).

⁴ *Id.*

⁵ *Id.* at 2-3.

projected lifetimes of its current satellites is also commercially sensitive.⁶

2. On March 17, 2004, Inmarsat Ventures Limited (“Inmarsat”) filed, pursuant to the Freedom of Information Act (“FOIA”),⁷ a request to inspect the documents submitted to the Commission by MSV in the MSV December 30 Letter.⁸ MSV opposed Inmarsat’s request.⁹ Inmarsat, together with any other individuals or entities that subsequently submit a request, pursuant to FOIA, to review these documents are each hereafter referred to as a “Reviewing Party.”

3. We conclude that requiring MSV to disclose the redacted information contained in the MSV December 30, 2003 letter to a Reviewing Party pursuant to the terms of a protective order will provide adequate protection to the confidential information included in the documents, without depriving a Reviewing Party of a meaningful opportunity to comment, as required by the Administrative Procedure Act. Consequently, the Division hereby adopts the attached Protective Order in Appendix A. We require MSV to provide copies of the documents to a Reviewing Party, once that Reviewing Party has executed and delivered the Acknowledgement of Confidentiality that is part of the Protective Order attached to this Order.

4. In the *Confidential Information Policy Order*,¹⁰ the Commission decided that, if the Commission issued a protective order, interested parties generally will be given at least 30 days from the date the protected material becomes available to file or supplement a petition to deny.¹¹ Given the relatively small amount of information that is becoming available subject to this Order, the comment and response periods have been shortened.

5. Accordingly, IT IS ORDERED that Mobile Satellites Ventures Subsidiary LLC IS REQUIRED to provide to Inmarsat Ventures Limited (and any other Reviewing Party that subsequently becomes a party to the Protective Order), a copy of the documents submitted to the Commission on December 30, 2003 under the terms of the Protective Order attached to this Order, once Inmarsat Ventures Limited, or any other Reviewing Party, as appropriate, has executed such Protective Order.

6. IT IS FURTHER ORDERED that comments in the underlying proceeding, File Nos. SAT-MOD-20031118-00333, SAT-AMD-20031118-00332, and SES-MOD-20031118-01879, with respect to the information available for disclosure pursuant to this protective order must be filed with the Commission on or before 21 days from the release of this Order and responses must be filed on or before 28 days from the release of this Order.

⁶ *Id.* at 2.

⁷ 5 U.S.C. § 522, *et. seq.*

⁸ Freedom of Information Act Request, Mobile Satellite Ventures Subsidiary LLC, filed by Inmarsat Ventures Limited on March 17, 2004, FOIA 2004-322 (“Inmarsat FOIA Request”).

⁹ Letter from Lon C. Levin, Vice President, Mobile Satellite Ventures Subsidiary, to Andrea S. Fischel, Managing Director, Federal Communications Commission, April 14, 2004 (“MSV FOIA Opposition”).

¹⁰ Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, GEN Docket No. 96-55, *Report and Order*, 13 FCC Rcd 24816 (1998) (“*Confidential Information Policy Order*”).

¹¹ *Confidential Information Policy Order*, 13 FCC Rcd at 24839 (para. 34).

7. This Order is issued pursuant to Sections 4(i) and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 310(d), Exception 4 of the Freedom of Information Act, 5 U.S.C. § 552(b)(4), and authority delegated under Sections 0.51 and 0.261 of the Commission's rules, 47 C.F.R. §§ 0.51, 0.261, and is effective upon its adoption.

FEDERAL COMMUNICATIONS COMMISSION

Thomas S. Tycz
Chief, Satellite Division
International Bureau

APPENDIX A

Protective Order

1. *Introduction.* On December 16, 2003, Commission staff requested certain information¹ from Mobile Satellite Ventures Subsidiary LLC (“MSV”) regarding pending waiver requests associated with MSV’s Ancillary Terrestrial Component (“ATC”) application.² In a responsive letter dated December 30, 2003, counsel for MSV submitted further information,³ requesting that some of the information be treated as confidential and providing redacted copies for the public application files.⁴ MSV alleged that the redacted information pertaining to the current and projected demand for its satellite services is commercially sensitive.⁵ MSV also alleged that disclosure of redacted information pertaining to the projected lifetimes of its current satellites is also commercially sensitive.⁶

2. On March 17, 2004, Inmarsat Ventures Limited (“Inmarsat”) filed, pursuant to the Freedom of Information Act (“FOIA”),⁷ a request to inspect the documents submitted to the Commission by MSV with the MSV December 30 Letter.⁸ MSV opposed Inmarsat’s request.⁹ Inmarsat, together with any other individuals or entities that subsequently submit a request, pursuant to FOIA, to review these documents are each hereafter referred to as a “Reviewing Party.” Consequently, the Satellite Division (“Division”) has adopted this Protective Order to ensure that these documents are afforded adequate protection. This Order reflects the manner in which “Confidential Information,” as that term is defined herein, is to be treated and is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon proper request under the Freedom of Information Act or other applicable law or regulation, including 47 C.F.R. § 0.442.

¹ See E-mail from Breck Blalock, Deputy Chief, Policy Division, International Bureau, Federal Communications Commission, to Bruce D. Jacobs, Counsel for Mobile Satellite Ventures Subsidiary LLC, December 16, 2003.

² File Nos. SAT-MOD-20031118-00333 (Modification of space station license (AMSC-1); SAT-AMD-20031118-00332 (Amendment to application for authority to launch and operate replacement satellite); and SES-MOD-20031118-01879 (Modification of blanket license for operation of mobile terminals with MSAT-1 (E980179)); *see also*, Policy Branch Information, *Public Notice*, Mobile Satellite Ventures Subsidiary LLC Ancillary Terrestrial Component Applications Accepted for Filing, Report No. SPB-200, (rel. Feb. 9, 2004).

³ Letter from Shaw Pittman LLP, counsel to Mobile Satellites Ventures Subsidiary LLC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated December 30, 2003 (“MSV December 30 Letter”).

⁴ *Id.*

⁵ *Id.* at 2-3.

⁶ *Id.* at 2.

⁷ 5 U.S.C. § 522, *et. seq.*

⁸ Freedom of Information Act Request, Mobile Satellite Ventures Subsidiary LLC, filed by Inmarsat Ventures Limited on March 17, 2004, FOIA 2004-322 (“Inmarsat FOIA Request”).

⁹ Letter from Lon C. Levin, Vice President, Mobile Satellite Ventures Subsidiary, to Andrea S. Fischel, Managing Director, Federal Communications Commission, April 14, 2004 (“MSV FOIA Opposition”).

3. *Definitions.* As used herein, capitalized terms, not otherwise defined herein, shall have the following meanings:

“Confidential Information” means the information redacted from the documents submitted to the Commission with MSV’s letter of December 30, 2003 or derived therefrom that is not otherwise publicly available;

“Counsel” means In-House Counsel and Outside Counsel of Record;

“In-House Counsel” means the attorney or attorneys employed by the MSV or a Reviewing Party or who is employed by an affiliated entity and who are actively engaged in the conduct of this proceeding, *provided that*, such counsel are not involved in competitive decision-making, *i.e.*, In-House Counsel’s activities, association, and relationship with a client are not such as to involve such counsel’s advice and participation in any or all of the client’s business decisions made in light of similar or corresponding information about a competitor; and

“Outside Counsel of Record” means the firm(s) of attorneys, or sole practitioner(s), as the case may be, representing the MSV or a Reviewing Party.

“Relevant Proceedings” means proceedings that involve: Mobile Satellite Ventures Subsidiary LLC file numbers SAT-MOD-20031118-00333, SAT-AMD-20031118-00332, SES-MOD-20031118-01879.

4. *Use of Confidential Information.* Persons obtaining access to Confidential Information under this Protective Order shall use the information solely for preparation and the conduct of Relevant Proceedings as delimited in this paragraph and paragraphs 6 (*Permissible Disclosure*), 11 (*Filings with the Commission*), and 12 (*Client Consultation*), and any subsequent judicial proceeding arising directly from these proceedings and, except as provided herein, shall not use such documents or information for any other purpose, including without limitation business, governmental, or commercial purposes, or in other administrative, regulatory or judicial proceedings.

5. *Non-Disclosure of Confidential Information.* Except with the prior written consent of the MSV, or as hereinafter provided under this Protective Order, no Confidential Information may be disclosed by a Reviewing Party to any person other than the Commission and its staff.

6. *Permissible Disclosure.* Subject to the requirements of paragraph 9 (*Procedures for Obtaining Access to Confidential Information*), Confidential Information may be reviewed by Counsel. Subject to the requirements of paragraph 9, Counsel may disclose Confidential Information to: (1) outside consultants or experts retained for the purpose of assisting Counsel in these proceedings, *provided that*, the outside consultants or experts are not involved in the analysis underlying the business decisions of any competitor of the MSV nor do they participate directly in those business decisions; (2) paralegals or other employees of such Counsel not described in clause 3 of this paragraph 6 assisting Counsel in this proceeding; (3) employees of such Counsel involved solely in one or more aspects of organizing, filing, coding, converting, storing, or retrieving documents or data or designing programs for handling data connected with these proceedings, or performing other clerical or ministerial functions with regard to documents connected with these proceedings; and (4) employees of third-party contractors performing one or more of the functions set forth in clause 3 of this paragraph 6. Individuals who have obtained access to Confidential Information in accordance with the provisions of this paragraph 6 and paragraph 9

may discuss and share the contents of the Confidential Information with any other person who has also obtained access in accordance with the provisions of this paragraph 6 and paragraph 9, and with the Commission and its staff.

7. *Protection of Confidential Information.* Persons described in paragraph 6 (*Permissible Disclosure*) shall have the obligation to ensure that access to Confidential Information is strictly limited as prescribed in this Protective Order. Such persons shall further have the obligation to ensure that: (1) Confidential Information are used only as provided in this Protective Order; and (2) the documents are not duplicated except as necessary for filing at the Commission under seal as provided in paragraph 11 (*Filings with the Commission*) below.

8. *Prohibited Copying.* If, in the judgment of the MSV, the documents contain information so sensitive that it should not be copied by anyone, the relevant pages of the documents shall bear the legend "Copying Prohibited," and no copies of such pages, in any form, shall be made. Application for relief from this restriction against copying may be made to the Commission, with notice to the MSV.

9. *Procedures for Obtaining Access to Confidential Information.* In all cases where access to Confidential Information is permitted pursuant to paragraph 6 (*Permissible Disclosure*), before reviewing or having access to any Confidential Information, each person seeking such access shall execute the Acknowledgment of Confidentiality ("Acknowledgment") (*see* Appendix B) and file it with the Division, on behalf of the Commission, and serve it upon the MSV so that the Acknowledgment is received by MSV at least five business days prior to such person's reviewing such Confidential Information. Where the person seeking access is one described in either clause 3 or 4 of paragraph 6, the Acknowledgment shall be delivered promptly prior to the person's obtaining access. MSV shall have an opportunity to object to the disclosure of the documents to any such persons. Any objection must be filed at the Commission and served on Counsel representing, retaining or employing such person within three business days after receiving a copy of that person's Acknowledgment (or where the person seeking access is one described in either clause 3 or 4 of paragraph 6, such objection shall be filed and served as promptly as practicable after receipt of the relevant Acknowledgment). Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from the MSV shall not have access to Confidential Information. Upon receipt of an Acknowledgment and upon there being no objection to the person seeking access by the MSV, the MSV shall deliver a copy of the documents to such person.

10. *Requests for Additional Disclosure.* If any person requests disclosure of Confidential Information outside the terms of this Protective Order, requests will be treated in accordance with Sections 0.442 and 0.461 of the Commission's rules.

11. *Filings with the Commission.* Persons described in paragraph 6 (*Permissible Disclosure*) may, in any documents that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedure:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings;

b. The portions of pleadings containing or disclosing Confidential Information must be covered by a separate letter to the Secretary of the Commission referencing this Protective Order;

c. Each page of any party's filing that contains or discloses Confidential Information subject to this order must be clearly marked: "**Confidential Information included pursuant to Protective Order, File No. SAT-MOD-20031118-00333, SAT-AMD-20031118-00332, SES-MOD-20031118-01879;**" and

d. The confidential portion(s) of the pleading shall be served on the Secretary of the Commission, the Division, and the MSV. Such confidential portions shall be served under seal, and shall not be placed in the Commission's public file. A party filing a pleading containing Confidential Information shall also file redacted copies of the pleading containing no Confidential Information, which copies shall be placed in the Commission's public files. Parties should not provide courtesy copies of pleadings containing Confidential Information to Commission Staff unless the Division so requests. Any courtesy copies shall be submitted under seal.

12. *Client Consultation.* Nothing in this order shall prevent or otherwise restrict Counsel from rendering advice to their clients relating to the conduct of this proceeding and any subsequent judicial proceeding arising therefrom and, in the course thereof, relying generally on examination of Confidential Information; *provided, however*, that in rendering such advice and otherwise communicating with such client, Counsel shall not disclose Confidential Information.

13. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein by any person shall not be deemed a waiver by the MSV of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing parties, by viewing this material agree: (1) not to assert any such waiver; (2) not to use Confidential Information to seek disclosure in any other proceeding; and (3) that accidental disclosure of Confidential Information by the MSV shall not be deemed a waiver of any privilege or entitlement as long as MSV takes prompt remedial action.

14. *Subpoena by Courts, Departments or Agencies.* If a court, or a federal or state department or agency issues a subpoena or orders production of the documents or any Confidential Information that a party has obtained under terms of this Protective Order, such party shall promptly notify the MSV of the pendency of such subpoena or order. Consistent with the independent authority of any court, department or agency, such notification must be accomplished such that the MSV has a full opportunity to oppose such production prior to the production or disclosure of the documents or Confidential Information.

15. *Violations of Protective Order.* Should a person that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, that person shall immediately convey that fact to the Commission and to the MSV. Further, should such violation consist of improper disclosure of Confidential Information, the violating person shall take all necessary steps to remedy the improper disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of Counsel from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the MSV at law or in equity against any person using Confidential Information in a manner not authorized by this Protective Order.

16. *Termination of Proceeding.* The provisions of this Protective Order shall not terminate at the conclusion of this proceeding. Within two weeks after conclusion of this proceeding and any administrative or judicial review, persons described by paragraph 6 (*Permissible Disclosure*) shall destroy or return to the MSV the documents and all copies of the same. No material whatsoever derived from may be retained by any person having access thereto, except Counsel (as described in paragraph 6

(Permissible Disclosure)) may retain, under the continuing strictures of this Protective Order, two copies of pleadings (one of which may be in electronic format) containing Confidential Information prepared on behalf of that party. All Counsel shall make certification of compliance herewith and shall deliver the same to Counsel for the MSV not more than three weeks after conclusion of this proceeding. The provisions of this paragraph 16 regarding retention of Stamped Confidential Documents and copies of same shall not be construed to apply to the Commission or its staff.

APPENDIX B

Acknowledgment of Confidentiality

I hereby acknowledge that I have received and read a copy of the foregoing Protective Order in the above-captioned proceeding, and I understand it. I agree that I am bound by the Protective Order and that I shall not disclose or use Confidential Information except as allowed by the Protective Order. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission.

Without limiting the foregoing, to the extent that I have any employment, affiliation or role with any person or entity other than a conventional private law firm (such as, but not limited to, a lobbying or public interest organization), I acknowledge specifically that my access to any information obtained as a result of the order is due solely to my capacity as Counsel or consultant to a party or other person described in paragraph 6 (*Permissible Disclosure*) of the foregoing Protective Order and that I will not use such information in any other capacity nor will I disclose such information except as specifically provided in the Protective Order.

I hereby certify that I am not involved in “competitive decision-making” as that term is used in the definition of In-House Counsel in paragraph 3 (*Definitions*) of the Protective Order.

I acknowledge that it is my obligation to ensure that: (1) Confidential Information is used only as provided in the Protective Order; and (2) the documents are not duplicated except as specifically permitted by the terms of paragraphs 6 (*Permissible Disclosure*) and 11 (*Filings with the Commission*) of the Protective Order, and I certify that I have verified that there are in place procedures, at my firm or office, to prevent unauthorized disclosure of Confidential Information.

Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Protective Order.

Executed at _____ this ____ day of _____, ____.

[Name]
[Position]

[Address]
[Telephone]